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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 12, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

PETITION FOR THE ENTRY OF A SUPPLEMENTAL DECREE

The United States, by its Attorney General and Solicitor General, respectfully petitions this Court to enter in this cause a supplemental decree in the form submitted herewith.

TOM C. CLARK,
Attorney General.
PHILIP B. PERLMAN,
Solicitor General.

774382—48

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UNITED STATES OF AMERICA, PLAINTIFF

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STATE OF CALIFORNIA

PROPOSED SUPPLEMENTAL DECREE

For the purpose of giving effect to the conclusions of this Court as stated in its opinion, announced June 23, 1947, and the decree entered by this Court on October 27, 1947, it is ORDERED, ADJUDGED AND DECREED as follows:

1. The following described areas constitute segments of that area underlying the Pacific Ocean, described in paragraph 1 of the decree of this Court entered on October 27, 1947, in which the United States is now, and has been at all times pertinent hereto, possessed of paramount rights and full dominion and power over the lands, minerals and other things and in which the State of California has no title or property interest:

(a) that situated seaward of the ordinary low-water mark of the Pacific Ocean along the mainland of California beginning at Point Conception and extending therefrom

in an easterly direction to Point Hueneme, following the sinuosities of the coast and crossing, from headland to headland, the mouths of all sloughs, rivers, creeks and other streams entering the Pacific Ocean between such points;

(b) that situated seaward of a straight line beginning at a point on the ordinary low-water mark of the Pacific Ocean eight hundred and fifty (850) yards distant in an easterly direction from the Point Fermin lighthouse (as shown on United States Coast and Geodetic Survey chart No. 5147, corrected to June 30, 1947) and near latitude 33°42′23″, longitude 118°17′06″, thence running in an easterly direction through a point 300 feet due south of the easterly extension of the Navy mole and breakwater to the point of intersection with the ordinary low-water mark of the Pacific Ocean in front of the City of Long Beach;

(c) that situated seaward of the ordinary low-water mark of the Pacific Ocean along the mainland of California beginning at the point at which the line described in paragraph 1 (b) intersects the ordinary low-water mark in front of the City of Long Beach and extending therefrom in a southeasterly direction to the western headland at the entrance to Newport Bay, following the sinuosities of the coast and crossing, from headland to headland, the mouths of all bays, sloughs, lagoons, rivers and other streams entering the Pacific Ocean between such points.

2. Jurisdiction is reserved to enter such further orders with respect to the subject matter of the decree entered by this Court on October 27, 1947, including orders with respect to other areas encompassed by paragraph 1 thereof, as may from time to time be deemed advisable or necessary to give full force and effect to that decree.

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MEMORANDUM RELATIVE TO PROPOSED SUPPLEMENTAL DECREE

In paragraph 1 of the decree entered by this Court on October 27, 1947, it was declared that the United States "is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California", and that "California has no title thereto or property interest therein." Su-

preme Court Journal, October 27, 1947, pp. 49–50. In the opinion rendered by the Court on June 23, 1947, it was noted that it might thereafter become necessary "to determine with greater definiteness particular segments of the boundary" of the area claimed by the United States. 332 U. S. at 26.

The United States believes that there exists a need for a prompt determination in this respect as to certain segments of the coast of California, and invokes the jurisdiction reserved by this Court in its decree of October 27, 1947, in petitioning for the entry of the supplemental decree submitted herewith. The areas affected by the proposed supplemental decree include and are immediately adjacent to submerged lands in which oil and gas wells are presently in operation pursuant to leases or agreements entered into under authority of the State of California. The number of wells falling within this category is in excess of 300. The operation of these wells is being continued pending identification of those particular wells which are situated within the area subject to the paramount rights and powers of the United States. It is highly desirable, therefore, that such identification be accomplished at the earliest possible moment. The Government anticipates that other supplemental decrees affecting these and other segments may be submitted from time to time, as circumstances require.

The segments of the California coast described in the proposed supplemental decree are three in number. Maps of these segments are annexed hereto as Appendices A, B, and C.[1] A word of explanation in respect to each of the paragraphs describing these segments seems appropriate.

1. *Paragraph 1 (a)*.—The area described in this paragraph is that situated between Point Conception and Point Hueneme, sometimes referred to as Santa Barbara Channel. It lies along the open coast in the Pacific Ocean, seaward of the ordinary low-water mark, and the only apparent basis for a claim adverse to the paramount rights of the United States is that there are several islands in this region situated a number of miles off the coast. The existence of these islands has resulted in the description of this area as a "channel", and has resulted in the State's contention that this area constitutes "inland waters", rather than "open sea". It is the position of the United States that this area is "open sea", that the mere presence of islands which are located a substantial distance from the shore of the mainland does not convert what would otherwise be "open sea" into "inland waters", and also that the actual status

[1] It should be noted that while the lines described in the proposed supplemental decree are not precise surveyor's lines, they are sufficiently definite to permit the drawing of such lines when the occasion demands.

is not affected by referring to the area between the mainland and the islands as a "channel".

2. *Paragraph 1 (b)*.—This paragraph relates to San Pedro Bay. The United States has already indicated that, in its opinion, San Pedro Bay is to be treated as inland waters and not part of the marginal sea (Supplemental Brief in Support of Motion for Judgment, pp. 2–3), but, because of the fact that the bay is essentially a large, open curve in the coast line, with no promontory to mark the eastern headland, it is the position of the United States that the outer limit of the mouth of the bay, which marks the beginning of the open sea area, is the line described in paragraph 1 (b) of the proposed supplemental decree.[2] This line extends over the water for a distance of approximately six nautical miles. The United States is informed that the State of California claims that the outer boundary of the bay should be fixed so as to embrace a considerably greater area than would be

[2] The point of beginning specified for this line, which is 850 yards distant in an easterly direction from the Point Fermin lighthouse, is that point on the promontory of the coast near Point Fermin at which the coast line turns northward and thus forms a headland on the western side of the bay. Point Fermin itself has not been designated as the point of beginning for the reason that it is situated on the opposite side of the promontory and a line drawn therefrom in the direction described in paragraph 1 (b) would necessarily traverse a considerable area of land before beginning its course across the water area.

encompassed within the bay by the line described in paragraph 1 (b).

3. *Paragraph 1 (c).*—The segment described in this paragraph is that situated immediately east and south of San Pedro Bay, extending down the coast to the entrance to Newport Bay. It lies along the open coast of the Pacific Ocean, seaward of ordinary low-water mark and outside of all streams, sloughs or estuaries, and seaward of the inland water areas known as Alamitos Bay and Anaheim Bay. There would appear to be no question as to the status of this segment as "open sea", although the State may contend, as indicated in the preceding paragraph, that the outer boundary of San Pedro Bay should be fixed so as to embrace a larger area than that which would be encompassed by the line described in paragraph 1 (b) of the proposed supplemental decree and thus to include a portion of the segment described in paragraph 1 (c). The determination of the question as to the eastern terminus of the line describing the outer boundary of San Pedro Bay will fix the northwestern limit of the segment described in paragraph 1 (c).

The purpose in presenting the petition and proposed supplemental decree submitted herewith is to initiate proceedings under which the boundaries between certain segments of the area subject to the dominion and paramount rights of the United

States and adjacent areas belonging to the State of California, its agents, successors, assigns or lessees, may be ascertained and made binding on all parties in interest. The United States has, therefore, stated in the proposed supplemental decree submitted herewith the location of such boundary lines to the best of its knowledge and belief and in accordance with the allegations of the complaint filed herein, from which there were excluded lands underlying the inland waters of California (including bays, ports and harbors). The United States has not surrendered, waived or attempted to contract away any part of the areas, or rights therein, over which it has dominion and paramount power under the decree of this Court entered October 27, 1947, and nothing herein is intended to have any such effect.

It is respectfully suggested that an order be issued requiring the State of California to answer the petition filed herewith. It may be that this Court, either prior or subsequent to the issuance of such an order, will desire a conference with counsel for the respective parties for the purpose of considering and expediting the procedure to be followed in order to determine adverse or conflicting claims which may develop as to the exact location of the boundary lines of the areas described in the proposed supplemental decree. It is suggested that one or more of the members of the Court be designated to hold a conference

similar to that held by Mr. Justice Black in this case on May 14, 1946.

Respectfully submitted.

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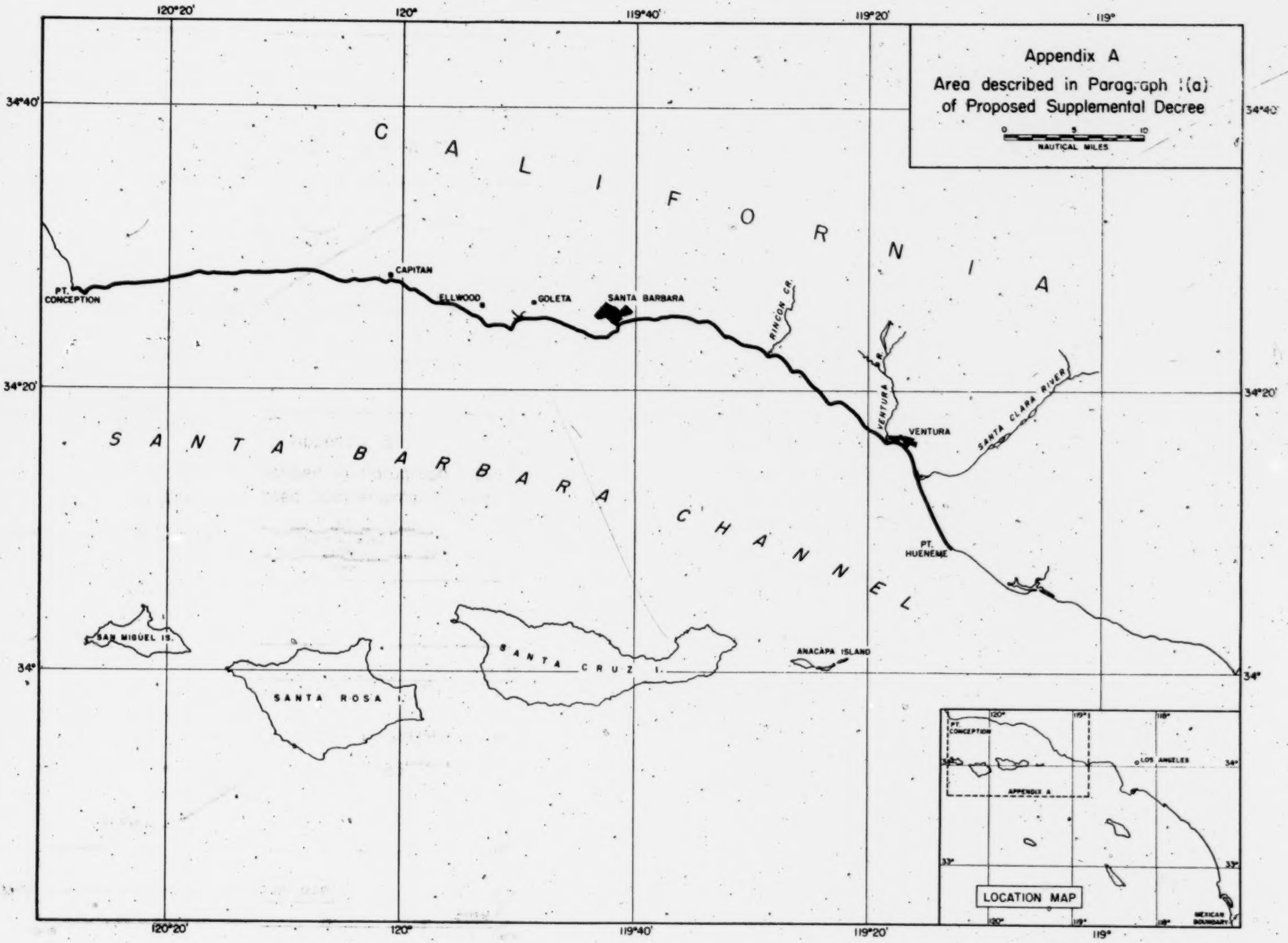
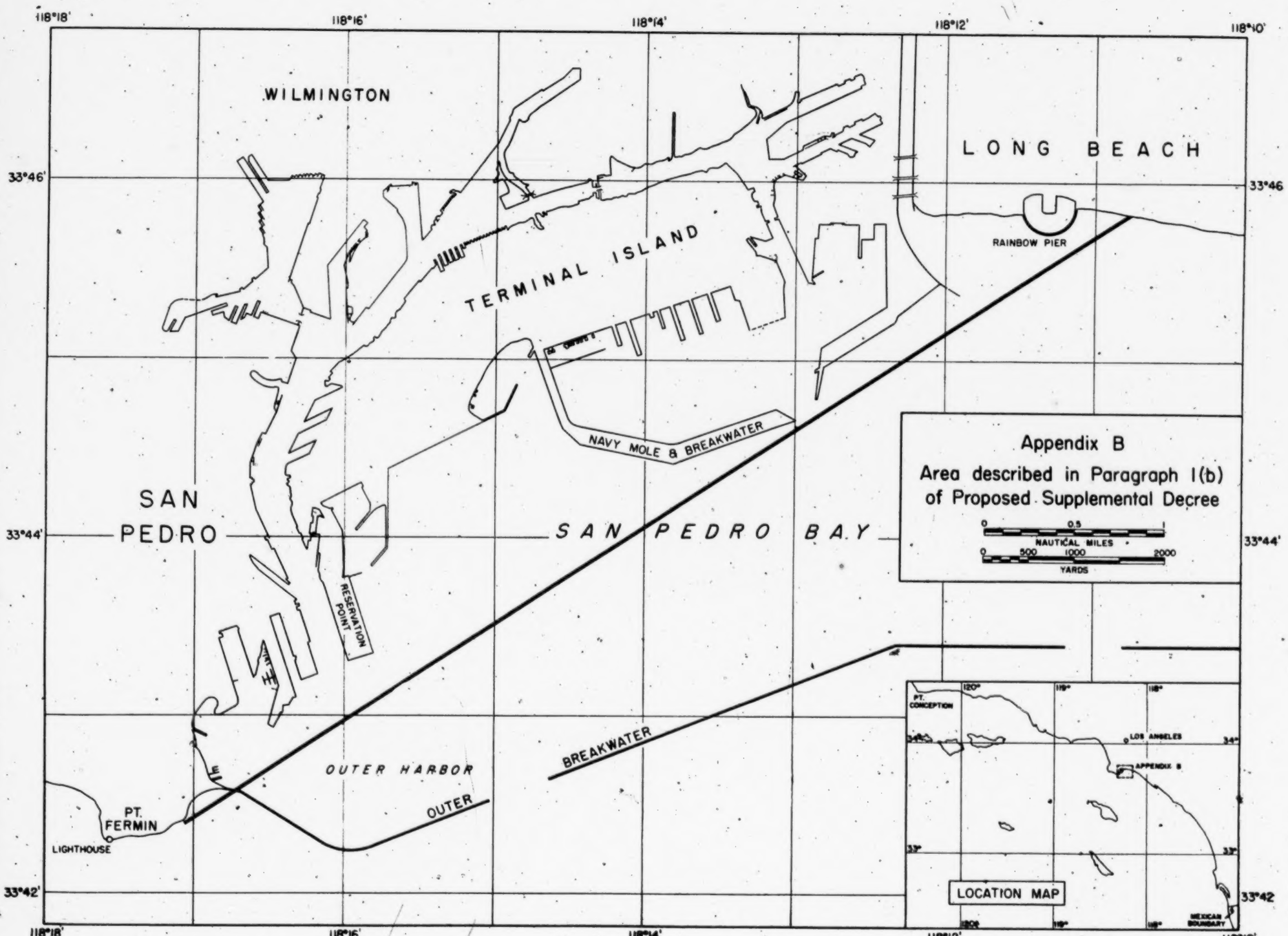
JANUARY 1948.

U. S. GOVERNMENT PRINTING OFFICE: 1948



774382—48 (Fols. p. 11) No. 1



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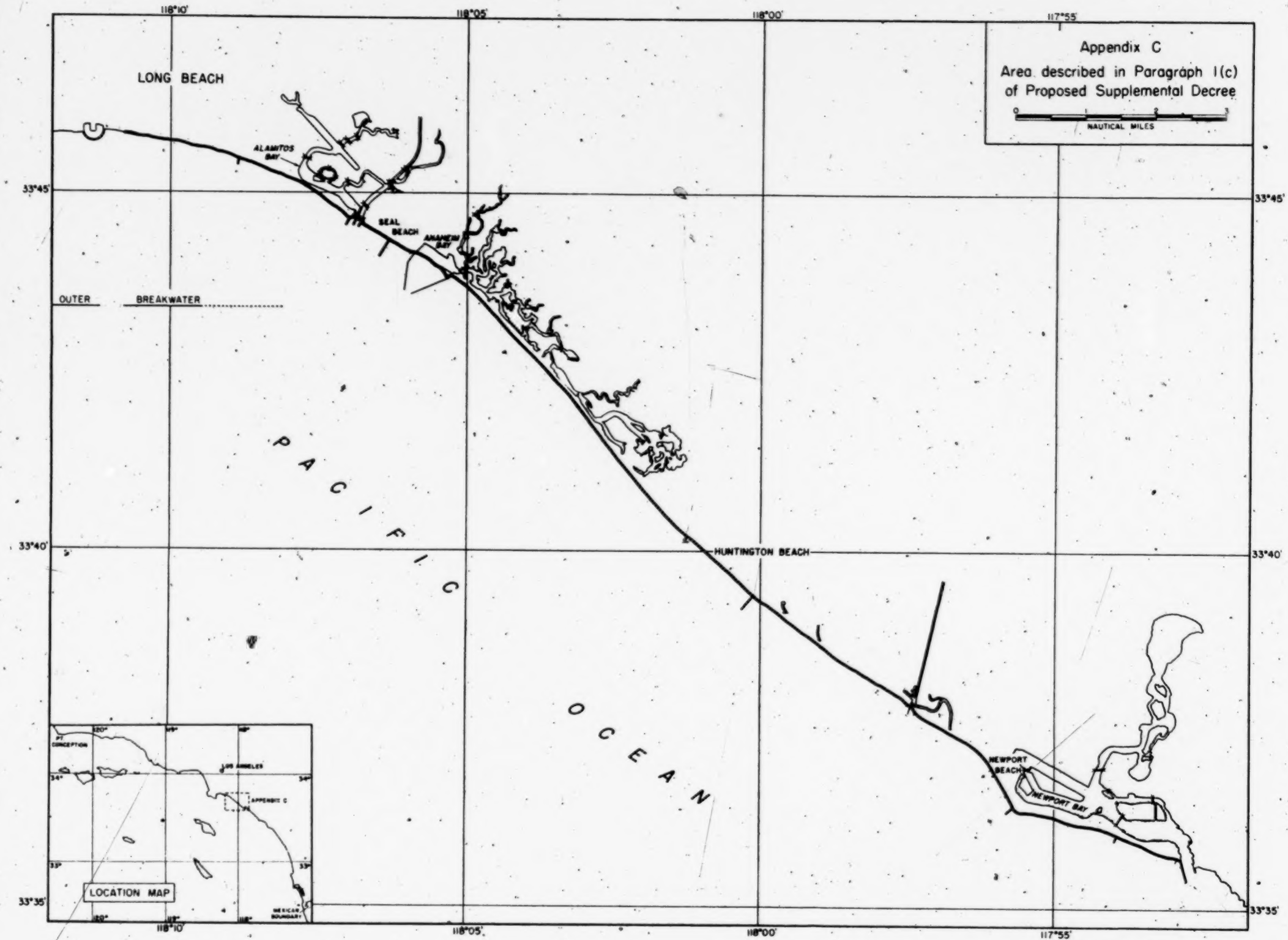

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